

REMARKS

The Applicants respectfully request reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow.

Status

Claims 1-37 were pending. Claims 21 and 22 had been withdrawn from consideration.

Claims 2, 7, 9, 11, 21, 22, 24, 30, 35, and 36 are requested to be cancelled without prejudice to further prosecution on the merits.

Claims 1, 3-6, 8, 10, 12-20, 23, 25-29, 31-34, and 37 are currently being amended.

Claims 38-43 are being added.

After amending the claims as set forth above, Claims 1, 3-6, 8, 10, 12-20, 23, 25-29, 31-34, and 37-43 are now pending in this Application.

The Applicants believe that the present Application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

Claim Objections

On page 2 of the Office Action, the Examiner objected to Claims 5, 6, 8, and 18 because of the following formalities: it appears that two systems for making deletions in the claims are used: strikethrough and double brackets. For clarity's sake the double brackets should be eliminated in favor of strikethroughs. Claim 6 is objected to because "there is a grammatical error in the last line of the claim." It appears that a word was left out of the second line of claim 18. Claims 5, 6, 8, and 18 have been amended. The Applicants request withdrawal of the objections to Claims 5, 6, 8, and 18.

Claim Rejections – 35 U.S.C. § 112 ¶ 2

On page 2 of the Office Action, the Examiner rejected Claims 1-20 and 23-37 under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. The Examiner stated The amendment to the claims is believed to overcome the issues identified by the Examiner. The Applicants request withdrawal of the rejection of Claims 1-20 and 23-37 under 35 U.S.C. § 112 ¶ 2.

Claim Rejections – 35 U.S.C. § 102

On page 3 of the Office Action, the Examiner rejected Claims 1-4, 6-16, 20, 23, 27-32, and 34-37 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,939,122 (“Brady”).

The Examiner stated that Brady discloses a container with a plunger, and that up and down motion of the plunger displaces the gas and liquid in the container and froths the milk. The Examiner also stated that Brady discloses a spring; however, the spring in Bradley does not bias the chamber in a particular condition (e.g., expanded or collapsed).

Claim 1 is in independent form and recites a “package for preparing a refreshment” comprising, in combination with other elements, a “package space comprises at least two chambers mutually connected by a channel” wherein the channel provides a “fluid flow disturber for causing turbulence in fluid flowing between the at least two chambers, and wherein each of the at least two chambers is configured for being varied by the at least one manually operable element, at least as to shape.” Claims 3, 4, 6, 8, 10, 12-16, 20, 23, 27-29, 31, 32, 34, 35, and 37 depend from independent Claim 1. (Claims 2, 7, 9, 11, 24, 30, 35, and 36 have been cancelled without prejudice to further prosecution on the merits.)

Brady does not identically disclose a “package for preparing a refreshment” comprising, among other elements, a “package space comprises at least two chambers mutually connected by a channel” wherein the channel provides a “fluid flow disturber for causing turbulence in fluid flowing between the at least two chambers, and wherein each of the at least two chambers is

configured for being varied by the at least one manually operable element, at least as to shape" as recited in independent Claim 1.

Brady shows a "frother" 1 having a movable plunger 40 that separates the container 10 into two chambers. The plunger includes a plate 43 with a series of slots 43a. The plunger 40 that acts as a flow disturber by means of a screen 42 and a coil spring 49 around the plunger's perimeter.

In contrast with the present invention, Brady is not a package and does not disclose or suggest the feature of varying each of at least two chambers as to shape. Bradley's decreasing chamber volume during use is accomplished by movement of the plunger 40, not by flexing the chamber walls.

Brady discloses a moving plunger, not a static flow disturber.

Brady discloses rigid walls, not a flexible wall.

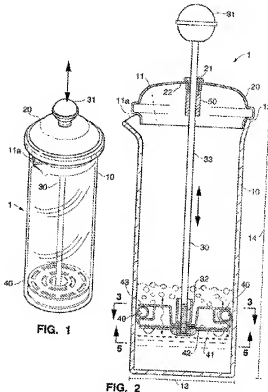
Brady discloses chambers that change due to the moving plunger, not due to distorting chamber walls.

The chambers in Brady do not naturally return to their original configuration (due to their rigid walls; the elastic/flexible properties of the walls).

The rejection of Claim 1 (as amended) over Brady is not proper. Claim 1 (as amended) is patentable over Brady.

Dependent Claims 3, 4, 6, 8, 10, 12-16, 20, 23, 27-29, 31, 32, 34, 35, and 37, which depend from independent Claim 1, are also patentable. See 35 U.S.C. § 112 ¶ 4.

The Applicants respectfully request withdrawal of the rejection of Claims 1, 3, 4, 6, 8, 10, 12-16, 20, 23, 27-29, 31, 32, 34, 35, and 37 under 35 U.S.C. § 102(b).



FIGS. 1 and 2 of Brady

* *

On page 5 of the Office Action, the Examiner rejected Claims 1-5, 15-19, 24-26, and 33 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,306,492 ("Zimmermann").

The Examiner stated that Zimmermann discloses a cup shaped package with a manually operable bellows portion that "could displace the liquid and gas in the container in such a way as to create enough turbulence by way of the perforated partition to create foam." However, there is no suggestion that the cup could be used as suggested by the Examiner. The cup shown in Zimmermann is designed to extract coffee or tea from particles in a filter, not create foam. Creating foam would inhibit the extraction of coffee or tea.

Claim 1 is in independent form and recites a "package for preparing a refreshment" comprising, in combination with other elements, a "package space comprises at least two chambers mutually connected by a channel" wherein the channel provides a "fluid flow disturber for causing turbulence in fluid flowing between the at least two chambers, and wherein each of the at least two chambers is configured for being varied by the at least one manually operable element, at least as to shape." Claims 3-5, 15-19, 25, 26, and 33 depend from independent Claim 1. (Claims 2, 7, 9, 11, 24, 30, 35, and 36 have been cancelled without prejudice to further prosecution on the merits.)

Zimmermann does not identically disclose a "package for preparing a refreshment" comprising, among other elements, a "package space comprises at least two chambers mutually connected by a channel" wherein the channel provides a "fluid flow disturber for causing turbulence in fluid flowing between the at least two chambers, and wherein each of the at least two chambers is configured for being varied by the at least one manually operable element, at least as to shape" as recited in independent Claim 1.

Zimmermann shows an apparatus for making a coffee beverage by extraction. Zimmermann uses a bellows section 53 to move liquid through a filter and coffee. The liquid moves through a perforated partition by decreasing the size of chamber 56. The apparatus of Zimmermann has one single variable volume chamber for holding coffee powder in a filter bag.

In contrast with the invention, Zimmermann does not disclose or suggest a capability of its device to foam the coffee beverage. Moreover Zimmermann does not have at least two chambers configured to be varied in shape. Only one of the chambers in Zimmermann distorts to cause fluid flow. Also, the desired effect of the apparatus in Zimmermann is to make coffee or tea, not create foam or froth. Generating foam would appear to interfere with the extraction of the coffee or tea.

Zimmermann discloses a single collapsing chamber, not two collapsing chambers.

The purpose of the cup in Zimmermann is to extract coffee/tea, not generating foam as recited in the claims.

Accordingly, the rejection of Claim 1 (as amended) over Zimmermann is not proper. Claim 1 (as amended) is patentable over Zimmermann.

Dependent Claims 3-5, 15-19, 25, 26, and 33, which depend from independent Claim 1, are also patentable. See 35 U.S.C. § 112 ¶ 4.

The Applicants respectfully request withdrawal of the rejection of Claims 1, 3-5, 15-19, 25, 26, and 33 under 35 U.S.C. § 102(b).

* * *

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

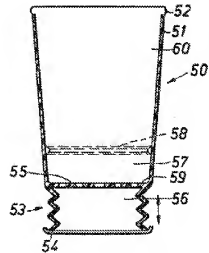


FIG. 7 of Zimmermann

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date November 24, 2009

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